

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BENEDICTA G. CASERES,

Plaintiff,

CIV. S-04-1294 PAN

v.

JO ANNE B. BARNHART,
Commissioner of Social
Security,

Memorandum of Decision

Defendants.

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Pursuant to 42 U.S.C. § 405(g), plaintiff requests this court review defendant's decision denying plaintiff supplemental security income benefits.

If the claimant meets eligibility requirements, the Commissioner bases his decision upon a five-step analysis. First, the claimant must not currently be working. 20 C.F.R. § 416.920(b). Second, the claimant must have a "severe" impairment. 20 C.F.R. § 416.920(c). Third, the medical evidence

1 of the claimant's impairment is compared to a list of impairments
2 that are presumed severe enough to preclude work; if the
3 claimant's impairment meets or equals one of the listed
4 impairments, benefits are awarded. 20 C.F.R. § 416.920(d).
5 Fourth, if the claimant can do his past work benefits are denied.
6 20 C.F.R. § 416.920(e). Fifth, if the claimant cannot do his
7 past work and, considering the claimant's age, education, work
8 experience, and residual functional capacity, cannot do other
9 work that exists in the national economy, benefits are awarded.
10 20 C.F.R. § 416.920(f).

11 Defendant found plaintiff was eligible, suffers from
12 coronary artery disease, hypertension and diabetes but no listed
13 impairment, that she retains the capacity for work that does not
14 require heavy lifting, including her past work as sewing machine
15 operator, and is not disabled. Tr. 32-39.

16 This court must uphold the Commissioner's determination
17 that a plaintiff is not disabled if the Commissioner applied the
18 proper legal standards and if the Commissioner's findings are
19 supported by substantial evidence. Sanchez v. Secretary of
20 Health and Human Services, 812 F.2d 509, 510 (9th Cir. 1987).
21 The question is one of law. Gonzalez v. Sullivan, 914 F.2d 1197,
22 1200 (9th Cir. 1990). Substantial evidence means more than a
23 mere scintilla, Richardson v. Perales, 402 U.S. 389, 401, 91
24 S.Ct. 1427 (1971), but less than a preponderance, Bates v.
25 Sullivan, 894 F.2d 1059, 1061 (9th Cir. 1990). It means such
26 relevant evidence as a reasonable mind might accept as adequate

1 to support a conclusion. Richardson, 402 U.S. at 401. The court
2 cannot affirm the Commissioner simply by isolating supporting
3 evidence but must consider the entire record, weighing evidence
4 that undermines as well as evidence that supports the
5 Commissioner's decision. Gonzalez v. Sullivan, supra, 914 F.2d
6 at 1200. If substantial evidence supports administrative
7 findings, or if there is conflicting evidence that will support a
8 finding of either disability or nondisability, the finding of the
9 Commissioner is conclusive, Sprague v. Bowen, 812 F.2d 1226,
10 1229-30 (9th Cir. 1987), and may be set aside only if the proper
11 legal standards were not applied in weighing the evidence,
12 Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988).

13 Plaintiff claims defendant erroneously rejected the
14 opinion of plaintiff's treating cardiologist, discredited
15 plaintiff's subjective complaints and refused to allow adequate
16 time for plaintiff to obtain counsel and that new evidence
17 presented to the appeals council requires reversal.

18 In July 2000, Dr. Gurinder Singh Grewal, a cardiologist
19 who treated plaintiff since December 1997 and who saw her at
20 least every three months, wrote that she was permanently disabled
21 by congestive heart failure secondary to cardiomyopathy. Tr.
22 226. But Dr. Grewal saw plaintiff in his office on September 25,
23 2000, and wrote afterward that "she has no clinical CHF." Tr.
24 221. Dr. Usman Ali, board certified in internal medicine,
25 examined plaintiff in November 2000. He diagnosed cardiomyopathy
26 but thought plaintiff could work. Tr. 393.

1 Defendant gave "little weight to Dr. Grewal's assessment,
2 as it is inconsistent with the treatment records" and gave
3 "greater weight" to Dr. Ali's assessment. Tr. 38.

4 The opinion of a treating physician is given deference
5 because "he is employed to cure and has a greater opportunity to
6 know and observe the patient as an individual." Sprague v.
7 Bowen, 812 F.2d 1226, 1230 (9th Cir. 1987) (citations omitted).
8 However, the opinion of the treating physician is not necessarily
9 conclusive as to either the physical condition or the ultimate
10 issue of disability. See Magallanes v. Bowen, 881 F.2d 747, 751
11 (9th Cir. 1989); Rodriguez v. Bowen, 876 F.2d 759, 761-62 & n. 7
12 (9th Cir. 1989). When a nontreating physician's opinion
13 contradicts that of the treating physician--but is not based on
14 independent clinical findings, or rests on clinical findings also
15 considered by the treating physician--the opinion of the treating
16 physician may be rejected only if the administrative law judge
17 gives "specific, legitimate reasons for doing so that are based
18 on substantial evidence in the record." Andrews v. Shalala, 53
19 F.3d 1035, 1041 (9th Cir. 1995); Magallanes, 881 F.2d at 751, 755
20 (quoting Sprague, 812 F.2d at 1230). "The ALJ can meet this
21 burden by setting out a detailed and thorough summary of the
22 facts and conflicting clinical evidence, stating his
23 interpretation thereof, and making findings." Magallanes, 881
24 F.2d at 750, (quoting Cotton v. Bowen, 799 F.2d 1403, 1408 (9th
25 Cir. 1986)). Where medical reports are inconclusive, "questions
26 of credibility and resolution of conflicts in the testimony are

functions solely of the Secretary." Sample v. Schweiker, 694 F.2d 639, 642 (9th Cir. 1982) (quoting Waters v. Gardner, 452 F.2d 855, 858 n. 7 (9th Cir. 1971)). Morgan v. Apfel, 169 F.3d 595 (9th Cir. 1999).

This court cannot determine from the record whether defendant has met its burden because there is no discussion of the terms used by the doctors nor any findings that their opinions are based upon different clinical findings. Indeed, independent medical research suggests they may have been talking about the same thing and only disagreed about the extent of impairment imposed. Cardiomyopathy apparently is weakening of the heart muscle that causes inadequate pumping. Symptoms include shortness or breath (dyspnea) decreasing tolerance for physical exertion, chest pain ("angina"), a sharp unrelenting pressure in the middle of the chest, fainting, light-headedness, dizziness, palpitations, swelling and fatigue. Congestive heart failure occurs when the heart fails to pump as much blood as the body needs. Apparently it may result from coronary artery disease. There is no dispute that plaintiff has coronary artery disease and cardiomyopathy. Cardiomyopathy, in turn, apparently may cause episodes of congestive heart failure that Dr. Grewal may have seen over the course of time but Dr. Ali may not have during his brief examination and review of what apparently was less than the entire medical record.

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The decision denying benefits is reversed and the matter is remanded for further proceedings.

Dated: May 18, 2005.

/s/ Peter A. Nowinski
PETER A. NOWINSKI
Magistrate Judge